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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 LARRY DONELL SMITH,) NO. CV 11-07332 JAK (SS)
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12) Petitioner,) ORDER ACCEPTING FINDINGS,
13)
13) v.) CONCLUSIONS, AND RECOMMENDATIONS OF
14)
14) ANTHONY HEDGPETH, Warden,) UNITED STATES MAGISTRATE JUDGE
15)
15) Respondent.)
16 _____)
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18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition,
19 all the records and files herein, and the Report and Recommendation of
20 the United States Magistrate Judge (the "R&R"). Additionally,
21 Petitioner filed a "Motion for Certificate of Appeal[ability]" on
22 October 24, 2011, which the Court construes as Objections (the
23 "Objections"). After having made a de novo determination of the
24 portions of the Report and Recommendation to which Objections were
25 directed, the Court concurs with and accepts the findings and
26 conclusions of the Magistrate Judge.

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1 As set forth in the R&R, Petitioner's sentencing claim is
2 foreclosed by Ninth Circuit precedent and therefore would fail, even if
3 the Petition was timely. (R&R at 10-11). Petitioner's Objections
4 neglect to address the controlling authority governing his claim. As
5 noted in the Report, the rule discussed in Crawford v. Washington, 541
6 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), regarding Sixth
7 Amendment confrontation rights, does not apply in sentencing
8 proceedings. See United States v. Littlesun, 444 F.3d 1196, 1199 (9th
9 Cir. 2006) ("Crawford does not expressly speak to sentencing
10 Crawford speaks to trial testimony, not sentencing.") (R&R at 10-11).
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12 Petitioner's Objections address only the timeliness issue.
13 Petitioner contends for the first time that he is entitled to equitable
14 tolling because his appellate counsel refused to return Petitioner's
15 transcripts. (Objections at 6).¹ Petitioner admits, however, that on
16 February 27, 2003, he received a letter from the California Appellate
17 Project notifying him that they had located Petitioner's transcripts.
18 (Id.). Petitioner has attached a copy of the letter which instructs
19 Petitioner on how to obtain his transcripts. (Id. at 15). Thus,
20 Petitioner's inability to obtain his transcripts could only have
21 justified his delay through early 2003. Even if Petitioner was entitled
22 to equitable tolling to some point in 2003, the instant Petition would
23 still be untimely because it was not filed until August 28, 2011.
24 Petitioner has failed to allege any facts explaining his delay during
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27 ¹ The Court refers to the pages of the Objections as if they were
28 consecutively paginated.

1 the over eight-year period from early 2003 until August 28, 2011.
2 Accordingly, Petitioner's Objections lack merit.

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4 **IT IS ORDERED** that the Petition is denied and Judgment shall be
5 entered dismissing this action with prejudice.

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7 **IT IS FURTHER ORDERED** that the Clerk serve copies of this Order and
8 the Judgment herein on Petitioner at his address of record.

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10 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

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12 DATED: November 1, 2011



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14 JOHN A. KRONSTADT
15 UNITED STATES DISTRICT JUDGE
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